

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SECURITY USA SERVICES, LLC,

Plaintiff,

-vs-

No. 1:20-CV-01100-SCY-KRS

INVARIANT CORP., and
HYPERION TECHNOLOGY GROUP, INC.,

Defendants.

**REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF SECURITY USA SERVICES
MOTION TO STAY BRIEFING DEADLINE TO FILE RESPONSE
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT,
PENDING RESOLUTION OF DISCOVERY MOTIONS**

Plaintiff, Security USA Services, LLC, by and through its attorneys of record, Law Office of Augustine M. Rodriguez, L.L.C., (Augustine M. Rodriguez, Esq.), and files this Reply Memorandum in support of its Motion to Stay, stating as follows:

I. INTRODUCTION

The Defendants Hyperion Technology Group, Inc., and Invariant Corp., (“Defendants”) filed a motion for summary judgment on October 26, 2021, and it was received on October 27, 2021. The parties were also having discovery issues and have both filed motions to compel, Plaintiff filed its Motion to Compel (Doc. 64) on October 29, 2021, and Defendants filed their motion to Compel on October 12, 2021 (Doc. 58) and an Order was issued on Defendants’ motion on November 24, 2021. In addition, Plaintiff Security USA Services requested and was granted an extension to file their response to the Defendants’ Motion for Summary Judgment until December 1, 2021. Plaintiff Security USA Services herewith again reiterates that the motion to stay should be granted and an Order staying the briefing of the Plaintiff’s Motion to Compel Discovery is decided, and Defendants are compelled to answer the discovery propounded by

Plaintiff.

The discovery responses are imperative for the full and proper briefing of the Plaintiff's response in opposition to the Defendants motion for summary judgment. The Defendants have failed to answer discovery that is imperative towards the timeline as to when Defendants began using the "firefly" name because the initial research into a gunshot detection system began with the United States military putting a call for the development of such devices after it tested a French gunshot detection system named "Pilar" in the early years of the war in Afghanistan. The development history is important because both Plaintiff and Defendants developed gunshot detection systems based on the research the United States Government was conducting. Plaintiff Security USA Services worked to license from the Pacific Northwest National Laboratory (PNNL) the "firefly" gunshot detection system PNNL developed between 2008 and 2010 while working with the U.S. Army's Armament Research, Development and Engineering Center (ARDEC) at Picatinny, New Jersey. **Exhibit 20.** Plaintiff Security USA Services alleges upon information and belief, that Defendants Hyperion and Invariant did not begin working with the Army Research Laboratory until after the United States military issued Solicitation Number W91CRB10T0027 for the joint development between the military and private corporations of a gunfire detection system on January 20, 2010. **Exhibit 11.** Since approximately 2003, the United States military was researching and developing gunshot detection systems based on the "Pilar" gunshot detection system, including the research that was being conducted by the Pacific Northwest National Laboratory (PNNL) for the U.S. Army's Armament Research, Development and Engineering Center (ARDEC) at Picatinny, New Jersey. **Exhibit 5.**

II. PLAINTIFF’S STATEMENT OF MATERIAL FACTS

Plaintiff asserts that the following facts (Plaintiff’s Statement of Material Facts “PSOMF”) are material to the consideration of the Plaintiff’s Motion to Stay Briefing of the Motion for Summary Judgment until the Plaintiff’s Motion to Compel is heard and such facts require that it be granted:

PSOMF 1. In 2003, the United States military was allowed the use of the PILAR gunshot detection system developed by a French company, and a similar system was developed by Army Research Lab in Adelphi, Maryland, named “Boomerang” and developed in 2004 with different iterations through 2008. *Exhibits 1, 2 and 3.*

PSOMF 2. In 2004, the United States military at the U.S. Army Research Laboratory (ARL) recognized civilian engineer Scott Miller for researching and developing a gunshot detection system for the United States military. *Exhibit 4.*

PSOMF 3. In 2004, the United States military at the U.S. Army’s Armament Research, Development and Engineering Center (ARDEC), Picatinny, New Jersey also began researching gunshot detection systems. *Exhibits 5.*

PSOMF 4. In 2006, a review of the United States military’s gunshot detection systems research was completed and included the research being conducted by the U.S. Army’s Armament Research, Development and Engineering Center (ARDEC), in Picatinny, New Jersey. *Exhibits 6.*

PSOMF 5. In 2007, the United States Congress wanted to develop gunshot detection systems and allowed the legislative language to “broaden DHS’ research and development priorities to include gunshot detection and qualifier systems.” *Exhibits 7, at p. 2.*

PSOMF 6. In 2008, the United States Congress began funding the research and development of gunshot detection systems and took testimony on the \$400 million procurement that included the “Boomerang” gunshot detection system being developed at the U.S. Army Research Laboratory, the “Doubleshot” shot detection system and the “Vanguard” gunshot detection weapons station. *Exhibits 8.*

PSOMF 7. In 2009, the United States Congress continued funding the research and development of gunshot detection systems and took testimony on the continuing procurement for the gunshot detection systems being developed at the U.S. military. *Exhibits 9.*

PSOMF 8. In 2010, the United States Congress continued funding the research and development of gunshot detection systems and took testimony on the continuing procurement for the gunshot detection systems being developed at the U.S. military and allowed the appropriations for joint military and private corporations in the development of gunshot detection systems. *Exhibits 10.*

PSOMF 9. In 2010, the United States military issued Solicitation Number W91CRB10T0027 for the joint research and development of gunshot detection systems. *Exhibit 11.*

PSOMF 10. In 2011, the United States Congress took testimony from the U.S. military on the status of the issued Solicitation Number W91CRB10T0027 for the joint research and development of gunshot detection systems. *Exhibit 12.*

PSOMF 11. In 2013, the United States military due to the issued Solicitation Number W91CRB10T0027 for the joint research and development of gunshot detection systems begins using the name “Firefly []as a joint effort by the Army Research Laboratory, the Aviation and Missile Research, Development and Engineering Center, and private sector partners.” *Exhibit*

14.

PSOME 12. In 2015, the United States military issues an article regarding the joint research and development of a gunshot detection system stating that Invariant Corp., “teamed with Hyperion Technology Group to develop the technology in collaboration with the Army Research Lab and the Aviation and Missile Research, Development and Engineering Center, known as AMRDEC.” *Exhibit 15.*

PSOME 13. In 2016, the United States military allows the deployment in Colorado of the “Firefly [] a government-owned technology developed by the Army’s Research Laboratory and the Army Aviation and Missile Research, Development and Engineering Center... ‘Firefly acoustic/EO sensor was designed for shooter detection and geo-location to support small installations, independent of installation power,’ said Timothy Edwards, AMRDEC Chief Scientist-Force Protection Technologies...” *Exhibit 16 and 18.*

PSOME 14. In Plaintiff Security USA Services, Requests for Admissions, Plaintiff directly asks Defendants to describe the involvement of Dr. Timothy Edwards, AMRDEC Chief Scientist with the development of the gunshot detection system developed by the Army Research Laboratory and the Army Aviation and Missile Research, Development and Engineering Center (AMRDEC). *Exhibit 17.* The information is relevant because PNNL corroborated with the Army’s Redstone Arsenal in Madison County, Alabama and introduced them to the “firefly” gunshot detection system they were developing, which is also the location of the U.S. Army Aviation and Missile Research, Development and Engineering Center (AMRDEC), where Dr. Timothy Edwards is employed. *Exhibit 20.*

PSOME 15. The United States military continues to develop government-owned technology developed by different entities including the Army Research Laboratory and the Army

Aviation and Missile Research, Development and Engineering Center (AMRDEC). *Exhibits 13 and 19.*

PSOME 16. Plaintiff Security USA Services worked to license from the Pacific Northwest National Laboratory’s “firefly” gunshot detection system they developed between 2008 and 2010 while working with the U.S. Army’s Armament Research, Development and Engineering Center (ARDEC and/or Picatinny Arsenal) at Picatinny, New Jersey. *Exhibit 20.*

PSOME 17. Plaintiff Security USA Services’ license from the Pacific Northwest National Laboratory also included the license of the “firefly” name. *See Exhibits 21 and 22.*

PSOME 18. Plaintiff Security USA Services’ license from the Pacific Northwest National Laboratory also included the license of the patent filed for the firefly sensor. *Exhibit 23.*

III. ARGUMENT

Plaintiff Security USA Services, LLC., licensed the technology and tradename developed by the Pacific Northwest National Laboratory (“PNNL”) in 2008. *See Exhibits 20, 21, 22 and 23.* This gives Plaintiff Security USA Services, LLC., an exclusive use of the technology and tradename. *Id.* Therefore, this is a case of a senior user and federal registrant of a service mark seeking to protect its exclusive right to use its mark throughout the United States from an infringing use of the same mark by a party whose first use occurred after the senior user’s first use of the mark for the same services and products and after the senior user’s first federal registration of the mark for closely related services and products. Plaintiff Security USA Services, LLC., licensed the PNNL name and federally registered the trademark FIREFLY® which issued on November 7, 2017, under the Registration Number 5,328,570. “A party may not invoke Fed. R. Civ. P. 56[(d)] by merely asserting that discovery is incomplete or that specific facts necessary to oppose

summary judgment are unavailable. Rather, the party must demonstrate precisely how additional discovery will lead to a genuine issue of material fact.” *Ben Ezra, Weinstein, & Co. v. America Online, Inc.*, 206 F.3d 980, 987 (10th Cir. 2000) (internal citations omitted). Plaintiff Security USA has met its burden to demonstrate what facts it needs in order for a stay to be entered. *Id.*

The Defendants’ motion for summary judgment should be stayed pending the resolution of the Plaintiff’s Motion to Compel Responses to Plaintiff’s Written Discovery Requests from Defendant Invariant Corp., and Defendant Hyperion Technology Group, Inc. *Doc. 65*. It is imperative that the motion to compel be heard, because Defendants have claimed a need for a protective order before disclosing documents that could be material to the full briefing of the Defendants’ Motion for Summary Judgment. *Doc. 61*.

The compelling of Defendants to answer the discovery is imperative, as PNNL also corroborated with the Army’s Redstone Arsenal in Madison County, Alabama and introduced them to the “firefly” name of their gunshot detection sensor. Therefore, the discovery information is relevant because the U.S. Army Aviation and Missile Research, Development and Engineering Center (AMRDEC) is also located at the Redstone Arsenal in Alabama and any use by Dr. Timothy Edwards of the “firefly” name was probably prior to the joint efforts of AMRDEC with the Defendants. Specifically, the Plaintiff’s Requests for Admissions seeks information as to what Dr. Timothy Edwards developed for Defendants, if anything, because he is employed at the U.S. Army Aviation and Missile Research, Development and Engineering Center (AMRDEC).

IV. CONCLUSION

As discussed above and in the Motion to Stay, the failure to answer the Plaintiff’s discovery by Defendants places Plaintiff at a disadvantage. Therefore, the briefing of the Defendants’ Motion for Summary Judgment must be stayed pending the resolution of the Plaintiff Security

USA Services, LLC.'s Motion to Compel discovery. WHEREFORE, PREMISES CONSIDERED, Plaintiff Security USA Services, LLC, respectfully requests that this Honorable Court grant its Motion to Stay and the Motion to Compel.

Respectfully submitted,
**LAW OFFICE OF
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THIS IS TO CERTIFY that on November 30, 2021, a copy of the foregoing pleading was filed electronically through the Pacer System, which caused the following to be served by electronic means:

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